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February 5, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 6, 2007

Case Number: TSO-0503

This Decision concerns the eligibility of xxxxxxxxxxxx (the individual) for continued access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by one of the Department of Energy's (DOE) Operations Offices. Based on the record before me, I have determined that the individual's access authorization should not be restored at this time.

I. Procedural Background

The individual is employed at a DOE facility where his work requires him to have an access authorization. The local DOE security office issued a Notification Letter to the individual on February 27, 2007. The Notification Letter alleges under 10 C.F.R. § 710.8(j) that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

The security concerns in the Notification Letter are based on the following factual allegations. The individual had the following three recent Driving Under the Influence of Alcohol (DUI) arrests: October 2005, March 2006, and June 2006. In addition, the individual acknowledged that he has a problem with alcohol and that his drinking escalated after a break-up with a girlfriend.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

At the hearing that I convened, the DOE Counsel called one witness, the DOE consultant-psychiatrist (psychiatrist). The individual called three witnesses: two co-workers and his fiancée. He also testified on his own behalf. The DOE submitted a number of written exhibits prior to the hearing.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render an opinion based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, the individual has not convinced me that restoring his security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. Findings of Fact

The relevant facts in this case are uncontested. According to the individual, he began drinking approximately eight years ago and has since been arrested for three DUIs. The individual's first DUI occurred in October 2005. According to the record, the individual had consumed about six beers when he went to buy medication for his mother. After delivering the medication to his mother, the individual met a friend on the way home and consumed another two or three beers from a cooler in the friend's trunk. Believing that his truck had a low tire, the individual pulled off to the side of the road and a police officer followed him. The individual was arrested after the police officer smelled alcohol on his breath. His Blood Alcohol Content (BAC) registered at 0.158. Then, in early March 2006, the individual was charged with a second DUI. He had consumed two beers at home with his girlfriend and six more beers later at a bar. On his way home from the bar, the individual was pulled over by a police officer. He failed a field sobriety test and his BAC registered at 0.138 on a

Breathalyzer. On March 29, 2006, the local DOE Security office conducted a Personnel Security Interview (PSI) with the individual. During the course of this interview, the individual admitted to having a drinking problem and spoke in detail about getting professional help for his drinking problem. However, after this interview, the individual continued to drink and failed to seek professional help. In June 2006, the individual was charged with yet another DUI after being stopped by a police officer for “weaving.” In this instance, the individual had consumed eight to ten beers during the course of the night. His BAC registered 0.153 on a Breathalyzer test.

The last DUI prompted the local DOE Security office to conduct another PSI on August 3, 2006. During this PSI, the individual stated that he had quit drinking, but that he had not sought treatment as he had promised during his March 2006 interview. He indicated that he was trying his best to maintain his abstinence from alcohol and had started attending church with his mother.

The individual’s three DUIs prompted the DOE to refer the individual to a psychiatrist. The psychiatrist evaluated the individual and issued his report on October 13, 2006. He concluded that the individual suffers from Alcohol Abuse without adequate evidence of rehabilitation or reformation. The psychiatrist further stated that there is no indication that the individual would respond to treatment and concluded that the individual poses a risk of lapse in judgment and reliability.

IV. Analysis

A. Security Concerns Cited Under 10 C.F.R. § 710.8(j)

The Notification Letter states in relevant part, that the individual “has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse.” See 10 C.F.R. § 710.8(j). The individual does not challenge that diagnosis and admits that he has a problem with alcohol. The Notification Letter indicates that the individual has been arrested for DUI on three separate occasions in the recent past.

This derogatory information creates serious security concerns about the individual. In other DOE security clearance proceedings, hearing officers have consistently found that a diagnosis of alcohol abuse raises important security concerns. *See, e.g., Personnel Security Hearing* (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0042), 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0014), *aff’d, Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In this case, the risk is that the individual’s excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. I therefore find that the DOE properly invoked Criterion J when it suspended the individual’s access authorization.

Since there is reliable derogatory information that creates substantial doubt concerning the individual’s continued eligibility for access authorization, I need only consider below whether the individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE’s security concerns under Criterion J arising from alcohol abuse.

B. Mitigation of Criterion J Concerns

A finding of derogatory information does not end the evaluation of the evidence concerning the individual's eligibility for access authorization. The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In the present case, the individual maintains that there are mitigating factors that alleviate the agency's security concerns and justify the restoration of his security clearance. In support of his position, the individual stated that he was never a heavy drinker until the fall of 2005, about two years after his divorce. Transcript of Hearing (Tr.) at 47. At that time, the individual stated that his drinking consisted of consuming a couple of beers on a weekend twice a month with a girlfriend. *Id.* After a break-up with this girlfriend, the individual stated that his drinking became heavy. *Id.* at 49. According to the individual, it was at this point, in October 2005, that he was arrested for his first DUI. *Id.* He testified that he has had several different girlfriends since October 2005, and admitted that his drinking increases when he is out socializing with a girlfriend. *Id.* at 57.

The individual further testified that he did not seek to enter a treatment program after his first two DUIs because he was caring for his mother and he believed that a treatment program "was going to tie up many hours." *Id.* The individual testified that he believed he could handle his drinking problem on his own. *Id.* He also acknowledged that DOE suggested during PSIs that he would benefit from a treatment program, but offered no reason for not entering a program such as Alcoholics Anonymous (AA). He testified that he is willing to enter a treatment program, but he just has not done it yet. Tr. at 66. According to the individual, he no longer drinks and has abstained from alcohol for four months prior to the hearing. *Id.* He testified that he does not currently have an alcohol problem nor does he have an urge to drink alcohol. *Id.* at 68. However, he acknowledged that he has no tangible proof that he has taken steps toward rehabilitation. *Id.* at 67. Finally, the individual testified that he has no intention of drinking alcohol in the future in light of the problems alcohol has caused him. *Id.* at 69. He testified to the following: "I'm not drinking ever again. I am finished with that. It's caused me enough pain and agony at this point. Again, I don't need it. I have no desire for it. I have friends that I have been around that . . . drink and I don't drink. I don't lick my lips and worry about having anything to drink. It doesn't bother me." *Id.*

The individual also offered the testimony of two co-workers and his fiancée to mitigate the agency's security concerns. One co-worker testified that the individual is a reliable and trustworthy employee, and believes the individual should not be considered a threat to national security. Tr. at 21. He further testified that he has socialized with the individual outside of work, and has never seen the individual get "really intoxicated." *Id.* at 23. At one point during his testimony, this co-worker stated that it has been about three or four months since he has seen the individual drink alcohol. *Id.* But later he testified that it was possibly two months ago that they met and had a couple of beers together. *Id.* at 29. Another co-worker who testified on behalf of the individual stated that the individual is a very loyal and trustworthy friend and employee. *Id.* at 33. This co-worker explained that he primarily has a working relationship with the individual both at work and outside of the office.

where the individual has assisted him with home projects. *Id.* at 35. He testified that he has never observed the individual drinking alcohol. *Id.* at 36.

The individual's fiancée has known the individual for four months and has lived with the individual for about two weeks. She testified that in the four months that she has known the individual, she has never observed him drinking any alcohol. Tr. at 40. The fiancée testified that she consumes alcohol occasionally, but does not have alcohol in the house. She further testified that she would consider the individual to be a reliable and trustworthy person. *Id.*

C. Expert Testimony

The psychiatrist testified that he evaluated the individual in October 2006. After reviewing the individual's personnel security file and conducting an evaluation, the psychiatrist concluded that the individual met the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV TR*, for Alcohol Abuse. He further concluded that there is no evidence of rehabilitation or reformation. DOE Exhibit 9. In his Report, the psychiatrist stated that the individual's arrests came in a rapid succession. *Id.* He noted that during the individual's PSIs, the individual "seemed to play a 'cat and mouse' game which suggested to me that perhaps he may have a vulnerability to talk about things to someone in order to keep them from disclosing his drinking problem." *Id.* The psychiatrist concluded that there is no indication that the individual would respond to treatment. *Id.* During the hearing, the psychiatrist reiterated that the individual is at risk of a lapse in his judgment and reliability because he has not addressed his alcohol problem and encouraged the individual to seek professional treatment for his alcohol abuse. Tr. at 12, 13. He added that it takes about five years to determine if persons such as the individual are likely to remain abstinent. *Id.* at 12, 14.

D. Analysis

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. See 10 C.F.R. § 710.27. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing* (Case No. TSO-0329), 29 DOE ¶ 83,032 (2007) (finding of rehabilitation from alcohol abuse under Criteria J); *Personnel Security Hearing* (Case No. TSO-0431), 29 DOE ¶ 83,068 (2007) (finding of no rehabilitation from alcohol abuse under Criteria J). Moreover, it is my responsibility as Hearing Officer to ascertain whether the factual basis underlying the psychiatric diagnosis is accurate, and whether the diagnosis provides sufficient grounds, given all the other information in the record, for the denial of a security clearance. See, e.g., *Personnel Security Hearing* (Case No. VSO-0068), 25 DOE ¶ 82,804 (1996). On the basis of that evaluation, I find that the diagnosis made in the present case has a proper factual basis. I am further persuaded from the testimony of the psychiatrist that the individual is not rehabilitated or reformed and is in need of alcohol treatment.

According to the individual, he consumed his last drink about four months ago. However, one of his co-workers stated that he believed it was only two months ago when he met with the individual

and had a couple of beers. I find that this contradiction casts doubt on the individual's credibility with respect to the length of his sobriety. In addition, the individual has not sought any professional treatment despite previous suggestions by DOE security personnel during his PSIs. He decided not to begin his sobriety until four months prior to the hearing, not after his Notification Letter, PSIs or psychiatric evaluation. Also, the psychiatrist testified that the individual is clearly not rehabilitated or reformed, even assuming he had four months of sobriety at the time of the hearing. He based this conclusion on the fact that the individual has not sought professional treatment for his alcohol abuse and has only recently professed his abstinence from alcohol. The record clearly supports his judgment and conclusion. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol. *See Personnel Security Hearing*, (Case No. VSO-0359), 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, (Case No. TSO-0011), 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing* (Case No. TSO-0001), 28 DOE ¶ 82,911 (2003).

V. Conclusion

As explained in this Decision, I find that the local DOE Security office properly invoked 10 C.F.R. § 710.8(j) in suspending the individual's access authorization. For the reasons described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: February 5, 2008